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FILED-CLERK  
U.S. DISTRICT COURT

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TEXAS-EASTERN

BY \_\_\_\_\_

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Luv n' care, Ltd.  
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Monroe, Louisiana 71201  
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

LUV N' CARE, LTD.

Plaintiff,

v.

BAMED AG,

Defendant.

Civil Action No.:

4:06cw486

JURY TRIAL

**COMPLAINT**

Plaintiff Luv n' care, Ltd. ("Luv n' care") by and through their counsel, hereby complains against Defendant Bamed AG ("Bamed") as follows:

**BACKGROUND AND FACTS**

1. The following are Luv n' care's claims for a declaratory judgment of patent invalidity and non-infringement pursuant to 28 U.S.C. §2201 and §2202.
2. These claims arise under the United States Patent Laws, 35 U.S.C. §1 et seq. The Court has jurisdiction over the subject matter of these counterclaims under 28 U.S.C. §1331 and §1338.
3. Venue is proper in this judicial district for the present counterclaims under 28 U.S.C. §1391 and §1400.
4. Plaintiff Luv n' care, Ltd. ("Luv n' care") is a corporation which is organized and existing under the laws of Louisiana, with a principal place of business at 3030 Aurora Avenue, Monroe, Louisiana 71201.
5. Defendant Bamed AG ("Bamed") is a corporation organized and existing under the laws of Switzerland, with a place of business at Wilenstrasse 17, 8832 Wollerau, Switzerland.
6. By letter dated November 7, 2006 and forwarded to Luv n' care, Bamed has alleged that it is the owner of U.S. Patent No. 6,514,275 B2 ("the '275 patent") and U.S. Patent No. D441,083 S ("the '083 patent") (collectively, "the Bamed patents"), and has alleged that pacifiers offered for sale by Luv n' care infringe the Bamed patents.
7. Due to Bamed's letter, an actual controversy exists with Bamed with respect to the Bamed patents and Luv n' care's activities, giving rise to the present action. Accordingly, the present action has been filed by Luv n' care due to the invalidity and noninfringement of the Bamed patents, as set forth below.

**FIRST CAUSE OF ACTION**  
**PATENT INVALIDITY AND UNENFORCEABILITY**

8. The asserted claims of the Bamed patents are invalid and unenforceable as they do not comply with the conditions and requirements for patentability set forth in the patent statutes and regulations, 35 U.S.C. §§1-376 and 37 C.F.R. §1.1 et seq.
9. The claims of the Bamed patents are invalid pursuant to 35 U.S.C. §102 and §103.
10. The claims of the Bamed patents are further invalid pursuant to 35 U.S.C. §112.
11. Upon information and belief, the claims of the Bamed patents are further unenforceable due to Bamed's inequitable conduct before the U.S. Patent Office.

**SECOND CAUSE OF ACTION**  
**NONINFRINGEMENT**

12. Luv n' care has not engaged in any acts of infringement, nor directly infringed, actively induced, or contributed to infringement, of any valid claim of the Bamed patents under 35 U.S.C. §271.
13. Bamed is not entitled to any injunctive relief under the standards applicable thereto, nor to any equitable relief, or to any other form of relief.

**THIRD CAUSE OF ACTION**  
**FAILURE TO COMPLY WITH 35 U.S.C. §287**

14. Upon information and belief, Bamed has failed to comply with the marking requirements of 35 U.S.C. §287, and is therefore precluded from requesting or recovering damages for any alleged actions that occurred prior to any alleged date of actual notice to Luv n' care of Bamed's claims of alleged infringement of the Bamed patents.
15. Luv n' care reserves the right to assert any further claims, causes of action, positions and defenses that it becomes aware of during discovery or at trial, as applicable.

**REQUEST FOR JURY TRIAL**

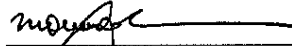
Pursuant to Rule 38, Federal Rules of Civil Procedure, Luv n' care hereby requests a jury trial in this action as to all issues of fact triable by jury.

WHEREFORE, Plaintiff Luv n' care, Ltd. hereby prays for judgment as follows:

- A. That the Bamed patents be declared invalid, void, and unenforceable, and that Luv n' care be granted a declaratory judgment of the same;
- B. That Luv n' care has not directly infringed, actively induced, or contributed to infringement of any valid claim of the Bamed patents, and has not otherwise committed any acts that constitute infringement under 35 U.S.C. §271, and that it be granted a declaratory judgment of the same;
- C. That Bamed and its counsel, officers, agents, directors, and employees, and all persons in active concert or participation with any of them, be enjoined from directly or indirectly asserting or threatening to assert the Bamed patents against Luv n' care, or any of its agents, officers, directors, employees, suppliers, or customers;
- D. That this case be deemed exceptional pursuant to 35 U.S.C. §285, that Luv n' care be awarded its reasonable attorneys' fees, costs and expenses, and that such award to Luv n' care be trebled; and,
- E. That the Court grant Luv n' care such other and further relief and damages as it may deem just and proper.

Dated: November 30, 2006

Respectfully submitted,



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Attorneys for Plaintiff  
Luv n' care, Ltd.

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Luv n' care, Ltd.

(b) County of Residence of First Listed Plaintiff Ouachita Parish, LA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Office of Morris E. Cohen, P.C., 1122 Coney Island Avenue, Ste 216-217, Brooklyn, New York, 11230; 718-859-8009

## DEFENDANTS

Bamed AG

County of Residence of First Listed Defendant Switzerland  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                |                                |   |                                |                                |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2     | <input type="checkbox"/> 2     | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5     | <input type="checkbox"/> 5     |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3     | <input type="checkbox"/> 3     | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6     |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
35 U.S.C. § 1 et seq. (pursuant to 28 USC § 2201 and 2202);

Brief description of cause:

Declaratory Judgment of Patent Invalidity and Noninfringement

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/30/2006

SIGNATURE OF ATTORNEY OF RECORD

*Morris E. Cohen*  
 MORRIS E. COHEN

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RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_